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AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2538*

House Bill No. 2872

By deleting all of the language following the enacting clause, and by substituting therefore the following:

SECTION 1. Tennessee Code Annotated, Section 68-11-201 (7), is amended by adding thereto the following new subdivision (C):

(C) "Assisted-care living facility" means a building, establishment, complex or distinct part thereof (1) which accepts primarily aged persons for domiciliary care, and (2) which provides on site to its residents room, board, non-medical living assistance services appropriate to the residents' respective needs, and medical services as prescribed by each resident's treating physician subject to the following limitations:

(1) To the extent not covered by a physician's order to a home care organization and not actually provided by a home care organization, medication procedures and administration that are typically self-administered, limited to oral medications, topicals, suppositories, and injections (excluding intravenous) pursuant to a physician's order; and emergency response; may be provided by an assisted-care living facility to its residents:

(2) All other services [i.e., part-time or intermittent nursing care, physical, occupational, and speech therapy; medical social services; medical supplies (other than drugs and biologicals); and durable medical equipment] that a licensed home care organization is authorized to provide to homebound persons, except for home health aide service may be provided to a resident of an assisted-care living facility, but only by a licensed home care organization.

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(3) An assisted-care living facility shall be subject to licensure and meet such requirements and minimum standards as the board shall prescribe in regulations pursuant to Tennessee Code Annotated, Section 68-11-209. In such regulations the board shall specifically address the special needs of the residents who may receive health care services as provided herein including documentation of physician orders, care needs and nursing and treatment records in an appropriate medical record maintained by the facility regardless of whether such services are rendered by facility staff or by arrangement with an outside source. The board shall, after consultation with the state fire marshal, include in such regulations fire safety standards which afford reasonable protection to assisted-care living facility residents without unduly disturbing the residential atmosphere to which they are accustomed. It shall be deemed that a facility licensed as a home for the aged and meeting the fire and life safety standards for such classification meets the fire and safety standards for an assisted-care living facility unless the board specifically finds that residents of a specific facility are subject to a significant health or safety risk.

(4) The board is not authorized to promulgate any regulation, make any determination, issue any waiver, take any action, or refuse to take action which has the effect of permitting an assisted-care living facility to provide care and services to an individual who does not meet the statutory definition of an assisted-care living facility resident.

SECTION 2. Tennessee Code Annotated, Section 68-11-201(g), is amended by designating the existing language as subdivision (A) and by adding thereto the following new subdivision (B):

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(B) "Assisted-care living facility resident" means primarily an aged ambulatory person who requires domiciliary care, and who may require one or more of the services described in Section 68-11-201(7)(C). Such resident will be transferred to a licensed hospital or licensed nursing home when, in the opinion of the resident's treating physician, such services available to such resident in the assisted-care living facility as aforesaid no longer are adequate for the care of the resident. This provision shall not be interpreted as limiting the authority of the board or the department to require the transfer or discharge of individuals to different levels of care as required by statute.

(1) A person shall be ineligible to be admitted as or to continue as an assisted-care living facility resident if any one of the following exists:

- (a) The person is in the latter stages of Alzheimer's Disease or related disorders.
- (b) The person requires physical or chemical restraints.
- (c) The person poses a serious threat to him/herself or to others.
- (d) The person requires hypodermoclysis.
- (e) The person requires nasopharyngeal and tracheotomy aspiration.
- (f) The person requires initial phases of a regimen involving administration of medical gases.
- (g) The person requires a Levin tube.
- (h) The person requires arterial blood gas monitoring.
- (l) The person is not able to communicate his or her needs.

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House Bill No. 2872

(2) A person shall be ineligible for admission to an assisted-care living facility if any of the conditions listed below exists; however a resident with any of such conditions may be retained by the facility for a period not to exceed twenty-one (21) days or for a longer period if, within such twenty-one (21) days (or by the first business day thereafter, if the twenty-first (21st) day is a Saturday, Sunday or holiday), or earlier if same becomes apparent to the facility, the department is notified of same and does not object. Notification shall be given to the medical director of the bureau of manpower and facilities of the department. The department shall respond to such notification within five (5) working days of its receipt of same.

(a) The person requires intravenous or daily intramuscular injections or intravenous feedings.

(b) The person requires gastronomy feedings.

(c) The person requires insertion, sterile irrigation, and replacement of catheters, except for routine maintenance of Foley catheters.

(d) The person requires sterile wound care.

(e) The person requires treatment of extensive stage 3 or stage 4 decubitus ulcer or exfoliative dermatitis.

(3) A person shall be ineligible to continue as a resident if after a twenty-one (21) day period the individual requires four (4) or more skilled nursing visits per week for conditions other than those listed in subsection (2) above.

SECTION 3. Tennessee Code Annotated, Section 68-11-202 (a)(1), 68-11-204 (a)(1), 68-11-206, 68-11-209(a) and (d), 68-11-210(a)(1), 68-11-216(a) and 68-11-219(a) are amended

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by inserting, after the words "homes for the aged," in each of said Sections, the words "assisted-care living facilities".

SECTION 4. Tennessee Code Annotated, Section 68-11-213 is amended by adding a subsection at the end of the existing language to read as follows:

(C)(1) The department may assess a civil penalty not to exceed five thousand dollars (\$5,000) against any person or entity operating an assisted-care living facility without having the license required by this chapter. Each day of operation is a separate violation.

(2) Beginning 180 days after the promulgation of regulations hereunder by the department, the department may assess a civil penalty not to exceed three thousand dollars (\$3,000) against any licensed assisted-care living facility for admitting or retaining residents not meeting the definition of assisted-care facility resident set forth in this chapter. Each such resident shall constitute a separate violation.

(3) The board is authorized to hold contested cases regarding appeals of the penalties assessed pursuant to this subsection.

SECTION 5. Nothing in this chapter shall require or authorize the state Medicaid agency or a managed care organization to approve, supply or cover the services set out in Tennessee Code Annotated, Section 68-11-201(7)(C).

Nothing in this chapter shall require or authorize the state Medicaid agency or a managed care organization to approve, supply or cover medically necessary home care services provided in an assisted-care living facility where the home care services are provided, supervised or directed by any person or entity with an ownership or control interest or by a

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managing employee of an entity with an ownership or control interest in the licensed assisted-care living facility.

Nothing in this chapter shall require any other third party payer to approve, supply or cover medically necessary home care services provided in an assisted-care living facility where the home care services are provided, supervised or directed by any person or entity with an ownership or control interest or by a managing employee of an entity with an ownership or control interest in the licensed assisted-care living facility.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is finally adjudicated to be in violation of any federal statute or constitutional provision and for that reason is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.